

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. 2017090027

DECISION

Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on October 31, 2017.

Jennifer Cummings, Program Manager, Fair Hearings and Legal Affairs, represented Inland Regional Center (IRC).

Claimant represented herself and appeared telephonically.

The matter was submitted on October 31, 2017.

ISSUES

Should fund claimant's request for Dial-A-Ride services to and from her day program five days per week?

FACTUAL FINDINGS

1. Claimant is a 36-year-old woman who is eligible for regional center services based on a diagnosis of mild intellectual disability. Claimant lives at home with her husband.

2. Claimant attends a day program through EXCEED five days per week. IRC currently funds a fixed-route monthly bus pass for claimant that she can use to attend the day program and access the community. Claimant's husband also receives services from IRC and he has Dial-A-Ride services provided. Sharon Han, IRC's Mobility and Transportation specialist, testified that when a person has Dial-A-Ride services, they are permitted to take a person with them free of charge. Claimant's testimony established that she has been riding with her husband on Dial-A-Ride because he attends the same day program.

3. According to claimant, her husband got a job at another location and she will no longer be able to ride the Dial-A-Ride with him. Claimant testified that in the past, IRC had provided Dial-A-Ride services and she does not understand why she cannot get them again. No documentation was provided to show IRC ever provided Dial-A Ride services to claimant.

4. Claimant testified that she does not like riding the public bus system because there are homeless people that ride the busses. She said she is "terrified" and "scared for her life." Claimant testified that some people on the busses have made "racial comments." Claimant said she feels safer on Dial-A-Ride and she has a disability so she thinks she should receive that service.

5. Claimant did not provide any testimony or documentation showing that she is physically or mentally incapable of riding fixed-route public transit or that the fixed-route public transit pass being provided would not be sufficient to give her access to her day program.

6. Marlen Palacios is claimant's current consumer services coordinator. Rushawn Moulton is respondent's prior consumer services coordinator. They both testified at the hearing. Neither Ms. Palacios nor Mr. Moulton identified any physical or mental concern that would preclude claimant from utilizing fixed-route public transit.

According to Mr. Moulton, referring to claimant's Client Development Information Report (CDER), claimant is independent because her skill development scores on the CDER report reflect she scored mostly scores of five, with five being totally independent. Both Ms. Palacios and Mr. Moulton, testified that claimant has used fixed-route public transit to access the day program in the past as well as to go to medical appointments. Ms. Palacios checked the fixed-route bus schedule and determined that there is a direct route claimant can use to get to and from her day program that is under an hour each way.

7. Demetria Lee is the Program Manager who supervises Mr. Moulton and Ms. Palacios. She is familiar with claimant's case. Ms. Lee testified that claimant's request was denied because claimant has a history of riding the fixed-route public transit to various places within the community and there was nothing in her background that suggested she could not use that service.

8. On August 2, 2017, IRC served claimant with a notice of proposed action denying claimant's request for Dial-A-Ride funding.

9. On August 25, 2017, IRC received claimant's fair hearing request challenging IRC's denial of Dial-A-Ride services.

10. The following documents were provided at the hearing: claimant's most recent individualized program plan (IPP), an IPP addendum, claimant's CDER report, various case notes, claimant's individualized habilitation service plan, and other documents pertaining to claimant's current services. Nothing in the documents showed that claimant is physically or mentally incapable of utilizing fixed-route public transit services.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. In a proceeding to determine whether an individual is eligible for services, the burden of proof is on the claimant to establish by a preponderance of the evidence that IRC should fund the requested service. (Evid. Code, §§ 115, 500; *McCoy v. Bd. of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.)

THE LANTERMAN ACT

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.) to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: To prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. Welfare and Institutions Code section 4501 outlines the state's responsibility for persons with developmental disabilities and the state's duty to establish services for those individuals.

4. The Department of Developmental Services (DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, DDS contracts with private non-profit community agencies, known as "regional centers," to provide the

developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. Welfare and Institutions Code section 4512, subdivision (b) defines “services and supports” as:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

6. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

7. Welfare and Institutions Code section 4646 requires that the Individual Program Plan and the provision of the services and supports be centered on the individual with developmental disabilities and take into account the needs and preferences of the individual and the family. Further, the provisions of services must be effective in meeting the IPP goals, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

8. Welfare and Institutions Code section 4648 requires regional centers to ensure that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and to secure services and supports that meet the needs of the consumer, as determined by the IPP. This section also requires regional centers to be fiscally responsible.

9. In implementing Individual Program Plans, regional centers are required to first consider services and supports in natural community, home, work, and recreational settings. (Welf. & Inst. Code, § 4648, subd. (a)(2).) Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family. (Ibid.) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer in order to best accomplish all or any part of the Individual Program Plan. (Welf. & Inst. Code, § 4648, subd. (a)(3).)

10. The regional center is also required to consider generic resources and the family's responsibility for providing services and supports when considering the purchase of regional center supports and services for its consumers. (Welf. & Inst. Code, § 4646.4.)

11. Welfare and Institutions Code section 4659, subdivision (c), prohibits IRC from purchasing services available from generic resources.

EVALUATION

12. Claimant had the burden of proving she should receive the requested Dial-A-Ride service. Claimant did not meet her burden.

While Dial a Ride may be more convenient and preferable than fixed-route public transit, the purpose of services and supports provided by a regional center are to alleviate the conditions associated with the disability. No evidence established that claimant needs curb-to-curb Dial-A-Ride service to alleviate the conditions associated with her mild intellectual disability. Claimant has utilized the public transit bus system in the past. Claimant's CDER evaluation shows she is independent. The reasons claimant stated for wanting Dial-A-Ride have more to do with her not liking the conditions she perceived to exist on the fixed-route public transit system rather than alleviating any disabling conditions associated with her mild intellectual disability. IRC currently provides a monthly RTA bus pass so claimant can access her day program at EXCEED. On this record, the fixed-route monthly bus pass is sufficient to meet claimant's needs and is consistent with the cost-effective approach and other applicable criteria set forth in the Lanterman Act.

ORDER

Claimant's appeal is denied.

DATED: November 7, 2017

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.